

**Appln No. 09/845,754**  
**Amdt date June 2, 2006**  
**Reply to Office action of February 27, 2006**

**REMARKS/ARGUMENTS**

Pending Claims:

Claims 1-5 and 7-10 are pending herein. Claim 1 is amended.

Rejection under 35 U.S.C. §102(b):

The Examiner rejects claim 1 under 35 U.S.C. §102(b) as being anticipated by U.S. patent no. 4,943,939 to Hoover. The Examiner states that Hoover teaches all of the claimed features of the invention, including “a container (col. 2, lines 56-61)”. Applicant respectfully traverses this ground of rejection. The “container” identified by the Examiner is actually a modified Mayo stand, and is described as follows: “The storer is a Mayo stand modified to obtain and transmit to the digital computer a pattern of light and dark areas or a video transmission created by instruments received thereon. The bed of the modified stand comprises a large array of fiber optic filaments or video camera for transmitting the pattern.” See col. 2, lines 56-61. The modified Mayo stand is clearly not a container (e.g., for medical disposables, e.g., sponges, pads, scalpels, etc.)

Applicant notes that this modified Mayo stand lacks “an opening for receiving said medical objects,” “at least one sensor for sensing said medical objects upon insertion into said container” or “at least one sensor being removably coupled to said opening.” In the modified Mayo stand of Hoover, the stand is “modified to obtain and transmit to the digital computer a pattern of light and dark areas or a video transmission created by instruments received thereon.” As described at col. 2, line 62 to col. 3, line 1, “[t]he digital computer counts the signals from the dispenser and decodes the light array pattern or the video signal received from the modified Mayo stand. The instrument count from the dispenser and the stand are compared, a difference determined and displayed by the computer or visually from the screen. A difference means that

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an instrument has been introduced into, but not received from, the operating environment. During an operation, the difference is equal to the number of instruments in use in the patient or in the surgeon's hands.” Accordingly, Applicant respectfully submits that Hoover does not anticipate the subject matter of claim 1.

Rejection under 35 U.S.C. §103(a):

The Examiner rejects claims 2-5 and 7-10 under 35 U.S.C. §103(a) as being unpatentable over Hoover in view of U.S. patent no. 5,629,498 to Pollock et al.

Hoover has been discussed and its lack of a container is noted above. The Pollock et al reference is cited as teaching a reader (col. 8, lines 33-39); an identification device (col. 8, lines 31-60); a memory (col. 9, line 42); an internal counter which is connected to the counter (col. 6, lines 63-col. 7, line 7; col. 7, lines 64-67; col. 9, lines 1-12), an alarm mechanism (col. 3, lines 39-41), disposable jar and a light emitting diode display (col. 3, lines 3-7; col. 10, lines 2-4).

Applicant respectfully submits that one having ordinary skill in the art would have no motivation to combine the teachings of Hoover and Pollock et al. The Hoover reference teaches a very specific surgical instrument, accounting apparatus, and method comprising a surgical instrument dispenser 10 from which clean surgical instruments, such as forceps, are withdrawn from predetermined stations when needed. By virtue of the clean instrument's location in the dispenser, its identity is pre-identified and by withdrawing an instrument from a predetermined station, the system will know that a particular surgical instrument is now in play and must be accounted for. Also enclosed is the modified Mayo stand 135, which is described above. Both the dispenser and the modified Mayo stand are connected to a computer 125 where the comparison takes place. When an instrument is withdrawn from a station of the dispenser 10, this sends a signal to the computer telling the computer that a certain instrument has been

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withdrawn. When the surgical instrument is then placed on the modified Mayo stand (e.g., after use), the instrument is scanned and is sought to be matched up with a surgical instrument that had previously been withdrawn from the dispenser to determine if all instruments are accounted for. Thus, a key feature of the Hoover device is the scanner that must scan the surgical instrument to confirm the surgical instrument's identity. Without this scanning component, there would be no positive identification of the instruments that had been used.

In the Pollock et al. intraoperative tracking device and process, a stand that includes containers for receiving disposable medical waste, such as fluid soaked sponges and pads, is disclosed. In this system, load cells and separate compartments are designed, for example, to receive 4x4 inch sponges and lap-type (laproscopic) sponges. The Pollock et al. device includes sensors over opening of the separate container to count the number of items deposited therein, and uses the load cells to determine their total weight. By using this system, an accounting can be made of disposable medical items used during a procedure and the amount of fluid soaked up during surgery can be calculated.


As noted above, Hoover does not actually disclose a container for receiving the medical objects, so the Examiner would need to relay on Pollock et al. for this element. Applicant respectfully submits that it is therefore clear that one having ordinary skill in the art would have no motivation to combine the two references since each has its own mutually exclusive method of scanning the used surgical devices and disposable medical waste and combining them would destroy the function of both. Accordingly, this ground of rejection is traversed.

With regard to the specific features noted by the Examiner as being present in the Pollock et al reference and teaching the subject matter of claims 2-5 and 7-10, inasmuch as the basic teaching is not obvious, neither would be the combinations.

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If the Examiner has any questions, a telephone call to the undersigned would be appreciated.

Respectfully submitted,  
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